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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

JAYSON FRANK CARDINALLI,

Defendant and Appellant.

H033959

(San Benito County  
Super. Ct. No. CR0801847)

**INTRODUCTION**

Following defendant Jayson Frank Cardinalli's negotiated no contest plea to battery with serious bodily injury (Pen. Code, § 243, subd. (d)),<sup>1</sup> the trial court suspended imposition of sentence and placed defendant on probation for four years with various terms and conditions. One of the conditions was that defendant pay victim restitution in the amount of \$102,440.60. On appeal, defendant contends that the trial court erred in failing to impose joint and several liability for its victim restitution order. As we find no error requiring reversal, we will affirm the judgment.

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<sup>1</sup> All further statutory references are to the Penal Code.

## **FACTUAL AND PROCEDURAL BACKGROUND<sup>2</sup>**

On August 9, 2008, Eric Anderson received a telephone call from James Mansfield. Mansfield said that he was angry at Anderson for kissing his ex-girlfriend and that he was going to “jump” Anderson. Anderson dismissed the call, but Mansfield continued to call him and make threats. On August 11, 2008, Anderson was visiting his friend in Hollister when defendant, Mansfield, and a minor approached the friend’s house and began yelling at Anderson. Defendant and the minor attacked Anderson, pushing him and punching him in the face before fleeing the scene. Anderson’s friend drove Anderson to the hospital and called 911. Anderson sustained a large laceration above his left eye and a small laceration below his left eye. The bill for Anderson’s medical treatment resulting from the incident is \$102,440.60, and Anderson’s medical insurance has covered \$73,472.09.

Several witnesses present at the time of the attack on Anderson told the police that they observed defendant strike Anderson in the face with a beer bottle. At the hospital, Anderson also stated that defendant struck him in the left eye with a beer bottle before defendant, Mansfield, and the minor fled the scene. Defendant and the minor were arrested a short time later at defendant’s home. Defendant admitted that he and his companions went to Anderson’s location and argued with him. Defendant also stated that the minor punched Anderson four times and knocked him down to the ground. Defendant told an officer that he brandished the bottle to Anderson’s face, but never hit him with it.

On September 22, 2008, the minor appeared before the San Benito County Juvenile Court. The minor admitted committing battery with serious bodily injury (§ 243, subd. (d)) and conspiracy (§ 182, subd. (a)(1)), and was continued as a ward of the court. He was also ordered to serve 365 days in custody and to pay restitution.

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<sup>2</sup> The facts underlying defendant’s conviction are summarized from the sheriff’s office incident report and the probation officer’s reports.

In the meantime, on August 13, 2008, a complaint was filed charging defendant with assault with a deadly weapon, to wit, beer bottle, hands, and fist (§ 245, subd. (a)(1); count 1); battery with serious bodily injury (§ 243, subd. (d); count 2); and conspiracy to commit assault with a deadly weapon (§§ 182, subd. (a)(1), 245, subd. (a)(1); count 3). On November 20, 2008, defendant waived his right to a preliminary hearing and the complaint was deemed to constitute the information. On November 26, 2008, defendant entered a plea of no contest to count 2, battery with serious bodily injury. Counts 1 and 3 were dismissed.

At the sentencing hearing on January 21, 2009, the court suspended imposition of sentence and placed defendant on probation for four years with various terms and conditions, including that defendant serve 365 days in county jail and pay victim restitution in the sum of \$102,440.60.<sup>3</sup> The discussion of the victim restitution order was as follows:

“[THE COURT]: Pay restitution in the amount of –

“[DEFENSE COUNSEL]: Your Honor, could – we need to back up on the restitution thing here for a minute, because there is another perpetrator that actually caused most of the damage, and I want to make sure that the other perpetrator is held jointly and severally liable also.

“THE COURT: That will be between the two perpetrators to apportion it out. I’m going to just, with respect to restitution, direct that Mr. Cardinalli pay for the restitution, and if his share can be apportioned out, then it’s between him and the other perpetrator to come to that arrangement.

“So I’ll order \$102,440.60 in restitution as determined by the probation officer and approved by the Court.

“Do you understand all the terms and conditions?

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<sup>3</sup> Defendant was sentenced to 365 days in county jail on an unrelated misdemeanor case, the sentence to run concurrent with the jail term in the instant case.

“THE DEFENDANT: Yes.

“THE COURT: I have an order in writing you’ll need –

“THE DEFENDANT: Except the money part.

“THE COURT: What’s that?

“THE DEFENDANT: Except the money part.

“THE COURT: Okay, then I’m going to have to impose state prison. So the choice is yours.

“THE DEFENDANT: No, I’m just saying like this is being really a lot.

“THE COURT: Do you want to talk with him for a second?

“We’ll pass it for a moment.

“[DEFENSE COUNSEL]: He’s fine, your Honor. He understands.

“THE COURT: Okay. You don’t have to.

“THE DEFENDANT: I just asked.

“THE COURT: No, but you either accept the terms or you don’t. If you don’t, I have to sentence you to state prison. And you’ll still have the restitution, by the way.

“[DEFENSE COUNSEL]: He’s aware of that.

“THE COURT: Do you accept the terms and conditions?

“THE DEFENDANT: Yes.

“THE COURT: I have an order you need to sign to effect the resolution.”

## **DISCUSSION**

On appeal, defendant contends that the court erred in requiring that defendant and his copерpetrator, the minor, attempt to resolve the issue of restitution between them. Defendant argues that an order directing victim restitution to be paid by both defendants jointly and severally would avoid the issue of multiple reimbursements by two copерpetrators for a single expense. The People maintain that the court’s restitution order was within the court’s discretion under section 1202.4 and should be upheld. We agree with the People.

California Constitution, article I, section 28, provides, in pertinent part: “It is the unequivocal intention of the People of the State of California that all persons who suffer losses as a result of criminal activity shall have the right to restitution from the persons convicted of the crimes for losses they suffer.” “ ‘In determining the amount of restitution, all that is required is that the trial court “use a rational method that could reasonably be said to make the victim whole, and may not make an order which is arbitrary or capricious.” ’ ” (*People v. Prosser* (2007) 157 Cal.App.4th 682, 690.)

Section 1202.4, subdivision (a)(1) provides that “[i]t is the intent of the Legislature that a victim of crime who incurs any economic loss as a result of the commission of a crime shall receive restitution directly from *any* defendant convicted of that crime.” (Italics added.) Subdivision (f) of the same section provides that “[t]he court shall order *full* restitution unless it finds compelling and extraordinary reasons for not doing so, and states them on the record.” (Italics added.)

“ ‘The standard of review of a restitution order is abuse of discretion. “A victim’s restitution right is to be broadly and liberally construed.” [Citation.] “ ‘When there is a factual and rational basis for the amount of restitution ordered by the trial court, no abuse of discretion will be found by the reviewing court.’ ” [Citations.]’ [Citation.]” (*People v. Baker* (2005) 126 Cal.App.4th 463, 467.)

The question thus presented is whether the trial court in this case used a rational method that could reasonably be said to make Anderson whole when it ordered defendant to pay the full amount of Anderson’s damages.

At the sentencing hearing on January 21, 2009, defendant argued that his co-perpetrator was more culpable, and the restitution order should therefore be joint and several. Even if each coperpetrator’s individual culpability varied, by pleading no contest to count 2, battery with serious bodily injury, defendant admitted his culpability and he is therefore responsible for Anderson’s injuries. The evidence in the record supports the inference that defendant played a major part in causing the damages Anderson sustained.

Defendant was clearly substantially involved in the attack on Anderson on August 11, 2008, and Anderson incurred \$102,440.60 in medical bills as a result of the attack. On these facts, the trial court's restitution order was clearly a rational method that could reasonably be said to make Anderson whole. For these reasons, the court acted within its discretion in requiring defendant to pay the full amount of Anderson's damages. (§ 1202.4.)

Defendant cites *People v. Blackburn* (1999) 72 Cal.App.4th 1520, in support of his contention that the court should have ordered joint and several liability. That case held that a trial court has "the authority to order direct victim restitution paid by both defendants jointly and severally." (*Id.* at p. 1535.) However, defendant has cited no authority for the proposition that the trial court is *required* to order restitution jointly and severally. A court is not obligated to order restitution jointly and severally simply because it has the authority to do so. "Indeed, joint and several liability may not be preferable in all cases involving codefendants." (*People v. Arnold* (1994) 27 Cal.App.4th 1096, 1100.) Nevertheless, defendant is entitled to a credit for any actual payments by his coparticipant. Thus, defendant is protected from any overpayment, and the order "is not rendered inappropriate by virtue of the fact a codefendant has been ordered to pay for the same loss." (*Ibid.*)

**DISPOSITION**

The judgment is affirmed.

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BAMATTRE-MANOUKIAN, ACTING P.J.

WE CONCUR:

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MIHARA, J.

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MCADAMS, J.